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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,815	10/17/2003	Emma A. Durand	009554-0306194	8788
909	7590	04/05/2005	EXAMINER	
PILLSBURY WINTHROP, LLP			ROWAN, KURT C	
P.O. BOX 10500			ART UNIT	
MCLEAN, VA 22102			PAPER NUMBER	

3643

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/686,815

Applicant(s)

DURAND ET AL.

Examiner

Kurt Rowan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Objections*

1. Claim 39 is objected to because of the following informalities: "lest" in line 1 should be --least--. Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wigton et al. (US 6,145,243) in view of Prather (US 6,443,434).

The patent to Wigton shows an insect capturing device as shown in Fig. 1, having a frame 12, 20, an insect trap chamber 34, 42, a supply of diffusible insect attractant 134 (Figure 3) and at least one air flow generator 38 that generates an outflow 50 and an inflow 52. Wigton shows an attractant 134 as disclosed in column 9, lines 11-16 and states that the attractant can be mounted in either housing 16 or 18. Both the trap enclosure 16 and the generator enclosure 18 would position the attractant 134 in the outflow or exhaust of fan 64. Wigton does not disclose the electrically powered heater operable to supply heat to the attractant above ambient temperature to facilitate diffusion of the insect attractant. The patent to Prather shows an electrically powered heater 25 to increase the rate of diffusion of attractant 18. In reference to claims 1

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and 26, it would have been obvious to provide Wigton with an electric heater as shown by Prather to increase the rate of diffusion of the attractant. In reference to claims 2 and 27, 33, both Wigton and Prather disclose a liquid scent, but it would have been obvious to employ a solid or a semi-solid scent since the function is the same and no stated problem is solved. In reference to claim 3, Prather positions the heater element immediately adjacent the supply of attractant noting column 2, lines 36-58. In reference to claims 4, 34, Wigton shows a perforated insect trap chamber 34. In reference to claim 5, 39, 40, Wigton shows an inlet path 52 and an outlet path 50 so that the inflow flowing through the perforated trap flows into the outflow path to become the outflow. In reference to claims 6-7, 41, Wigton shows a fan system to generate an air flow having a suction fan 38 and an exhaust fan 64, but it would have been obvious to employ a single fan since the function is the same. Also, see *In re Kuhle*, 188 USPQ 7. In reference to claim 8, Prather shows a power cord with a connector (not labeled, but see Fig. 1). In reference to claims 9, 10, Prather discloses a battery 28 and the use of a solar cell 30. In reference to claims 11 and 32, Prather and Wigton show openings but do not disclose that they are adjustable. However, it would have been obvious to make the opening adjustable. See *In re Stevens*, 101 USPQ 284. In reference to claims 12-13, 15, 16, and 18, 19, neither Wigton or Prather show a heating element encircling the insect attractant, but it would have been obvious to encircle the attractant to maximize heat transfer to the attractant. Prather shows a heating element placed in a liquid attractant so it would have been obvious to located a heating element in the middle of the attractant such as in a internal bore. In reference to claims 14, 17, Prather

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discloses a resistance heater 25. In reference to claims 20-25, 30-31, Wigton shows outflow flowing downwardly and outwardly from the device and the inflow is substantially counter to and adjacent an upper portion of the outflow such that insect attracted to the outflow and along the upper portion thereof towards the outflow opening intersect the inflow and are thereby drawn into the trap by the inflow.

### ***Response to Arguments***

3. Applicant's arguments filed January 27, 2005 have been fully considered but they are not persuasive. Applicant's response overcomes the rejection of Wigton in view of Whittenberger under 35 USC 103. Applicant argues, in relation to the rejection of the claims 1-31 under Wigton in view of Prather, that Prather does not suggest that the attractant receptacle is positioned such that the outflow flows through the receptacle for exposure to the insect attractant., but does suggest that the fan moves a stream of air through the dispenser housing and vapor from the heated scent is mixed with the incoming air. However, the heated attractant is closer to the outflow end 14 of housing than the inflow end 12 so the flow of attractant can be considered to be part of the outflow. As to the claims 11 and 32 which recite that the attractant receptacle has an adjustable opening, the examiner agrees that neither Wigton or Prather show an adjustable opening for the attractant, but it would have been obvious to employ an adjustable opening since it is obvious to make openings adjustable as stated by In re Stevens, cited above.

***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is 571 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Kurt Rowan", with a long, sweeping horizontal stroke extending to the right.

Kurt Rowan  
Primary Examiner  
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KR